

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Katrina Menell,

Plaintiff,

v.

**General American Life Insurance
Company,** a Missouri Corporation;
FBF Eastvale, LLC, a California
Limited Liability Company; and
Does 1-10,

Defendants

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence

Plaintiff Katrina Menell complains of Defendants General American Life Insurance Company, a Missouri Corporation; FBF Eastvale, LLC, a California Limited Liability Company; and Does 1-10, ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from a degenerative condition called chronic bilateral split piriformis

1 syndrome with bilateral sciatica. She cannot walk and uses a wheelchair for
2 mobility.

3 2. Defendants are, or were at the time of the incidents, the real property
4 owners, business operators, lessors and/or lessees for the Farmer Boys
5 restaurant ("Restaurant") located at or about 10475 Mountain View Avenue,
6 Loma Linda, California.

7 3. Plaintiff does not know the true names of Defendants, their business
8 capacities, their ownership connection to the property and business, or their
9 relative responsibilities in causing the access violations herein complained of,
10 and alleges a joint venture and common enterprise by all such Defendants.
11 Plaintiff is informed and believes that each of the Defendants herein,
12 including Does 1 through 10, inclusive, is responsible in some capacity for
13 the events herein alleged, or is a necessary party for obtaining appropriate
14 relief. Plaintiff will seek leave to amend when the true names, capacities,
15 connections, and responsibilities of the Defendants and Does 1 through 10,
16 inclusive, are ascertained.

17
18 **JURISDICTION & VENUE:**

19 4. This Court has subject matter jurisdiction over this action pursuant to
20 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
21 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22 5. Pursuant to pendant jurisdiction, an attendant and related cause of
23 action, arising from the same nucleus of operative facts and arising out of the
24 same transactions, is also brought under California's Unruh Civil Rights Act,
25 and the California Disabled Persons Act, which acts expressly incorporate the
26 Americans with Disabilities Act.

27 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
28 founded on the fact that the real property which is the subject of this action is

1 located in this district and that Plaintiff's cause of action arose in this district.

2
3 **FACTUAL ALLEGATIONS:**

4 7. The Plaintiff went to the Restaurant in May of 2013 to eat.

5 8. The Restaurant is a facility open to the public, a place of public
6 accommodation, and a business establishment.

7 9. Parking spaces are one of the facilities, privileges and advantages
8 offered by defendants to their customers at the Restaurant.

9 10. Unfortunately, the parking stall and access aisles for use by persons
10 with disabilities are not level with each other because there is a built up curb
11 ramp that runs into the access aisle and parking stall. This results in slopes of
12 about 8%.

13 11. Restrooms are one of the facilities, privileges and advantages offered
14 by defendants to their customers at the Restaurant.

15 12. The restroom stall provides a coat hook for use by patrons. The coat
16 hook is mounted at a height of 64 inches and is not effectively useable by
17 wheelchair users.

18 13. The flush control for the accessible toilet is not mounted on the wide or
19 open side of the toilet.

20 14. The restroom sink is mounted such that the counter or rim is 35 inches
21 above the finish floor.

22 15. There is no clear floor space in front of the disposable toilet seat cover
23 dispenser because it is mounted on the wall behind the toilet.

24 16. The plaintiff personally encountered these problems. This inaccessible
25 condition denied the plaintiff full and equal access and caused her difficulty
26 and frustration.

27 17. Plaintiff would like to return and patronize the Restaurant but will be
28 deterred from visiting until the defendants cure the violation. Plaintiff lives

1 about seven miles from the Restaurant. The Restaurant is conveniently
2 located. Because of plaintiff's knowledge of the barriers, she has been, and
3 will continue to be, deterred from visiting the Restaurant until the barriers are
4 removed.

5 18. The defendants have failed to maintain in working and useable
6 conditions those features required to provide ready access to persons with
7 disabilities.

8 19. Given the obvious and blatant violations, the plaintiff alleges, on
9 information and belief, that there are other violations and barriers on the site
10 that relate to his disability. Plaintiff will amend the complaint, to provide
11 proper notice regarding the scope of this lawsuit, once he conducts a site
12 inspection. However, please be on notice that the plaintiff seeks to have all
13 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
14 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
15 he can sue to have all barriers that relate to his disability removed regardless
16 of whether he personally encountered them).

17 20. Additionally, on information and belief, the plaintiff alleges that the
18 failure to remove these barriers was intentional because: (1) these particular
19 barriers are intuitive and obvious; (2) the defendants exercised control and
20 dominion over the conditions at this location and, therefore, the lack of
21 accessible facilities was not an "accident" because had the defendants
22 intended any other configuration, they had the means and ability to make the
23 change.

24
25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
26 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
27 defendants (42 U.S.C. section 12101, et seq.)

28 21. Plaintiff repleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint.

3 22. Under the ADA, it is an act of discrimination to fail to ensure that the
4 privileges, advantages, accommodations, facilities, goods and services of any
5 place of public accommodation is offered on a full and equal basis by anyone
6 who owns, leases, or operates a place of public accommodation. See 42
7 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 8 a. A failure to make reasonable modifications in policies, practices,
9 or procedures, when such modifications are necessary to afford
10 goods, services, facilities, privileges, advantages, or
11 accommodations to individuals with disabilities, unless the
12 accommodation would work a fundamental alteration of those
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 14 b. A failure to remove architectural barriers where such removal is
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
16 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
17 Appendix "D."
- 18 c. A failure to make alterations in such a manner that, to the
19 maximum extent feasible, the altered portions of the facility are
20 readily accessible to and usable by individuals with disabilities,
21 including individuals who use wheelchairs or to ensure that, to
22 the maximum extent feasible, the path of travel to the altered
23 area and the bathrooms, telephones, and drinking fountains
24 serving the altered area, are readily accessible to and usable by
25 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

26 23. Under the 1991 Standards, parking spaces and access aisles must be
27 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
28 Standards § 4.6.2. Here, the access aisle is not level and has a ramp taking up

1 part of the access aisle. Under the 2010 Standards, access aisles shall be at
2 the same level as the parking spaces they serve. Changes in level are not
3 permitted. 2010 Standards 502.4. "Access aisle are required to be nearly level
4 in all directions to provide a surface for wheelchair transfer to and from
5 vehicles." 2010 Standards § 502.4 Advisory. Specifically, built up curb ramps
6 are not permitted to project into access aisles and parking spaces. Id. No more
7 than a 1:48 slope is permitted. 2010 Standards § 502.4.

8 24. Here the failure to provide level parking is a violation of the law.

9 25. The maximum height that a useable object can be mounted, assuming
10 that a side approach is possible, is 54 inches. 1991 Standards § 4.2.6. Under
11 the 2010 Standards, the maximum height is 48 inches. 2010 Standards §
12 308.3.

13 26. Here, the coat hook is mounted beyond the maximum height
14 requirements in violation of the law.

15 27. Flush controls for accessible toilets must be mounted on the open or
16 wide side of the toilet, i.e., not the side nearest the adjacent side wall. 1991
17 Standards § 4.16.5; 2010 Standards § 604.6.

18 28. Here, the failure to properly locate the flush control is a violation of the
19 ADA.

20 29. Sinks must be mounted so that the counter or rim is no higher than 34
21 inches above the finish floor. 1991 Standards § 4.24.2; 2010 Standards §
22 606.3.

23 30. Clear floor space that allows a forward or a parallel approach by a
24 person using a wheelchair shall be provided at controls, dispensers,
25 receptacles, and other operable equipment. 1991 Standards § 4.27.2; 2010
26 Standards § 309.2.

27 31. Here, the failure to provide such floor space is a violation of the law.

28 32. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily
2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 33. Here, the failure to ensure that the accessible facilities were available
4 and ready to be used by the plaintiff is a violation of the law.

5 34. Given its location and options, the Restaurant is a business that the
6 plaintiff will continue to desire to patronize but he has been and will continue
7 to be discriminated against due to the lack of accessible facilities and,
8 therefore, seeks injunctive relief to remove the barriers.

9
10 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
11 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
12 51-53)

13 35. Plaintiff repleads and incorporates by reference, as if fully set forth
14 again herein, the allegations contained in all prior paragraphs of this
15 complaint.

16 36. Because the defendants violated the plaintiffs' rights under the ADA,
17 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
18 Code § 51(f), 52(a).)

19 37. Because the violation of the Unruh Civil Rights Act resulted in
20 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
21 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
22 55.56(a)-(c).)

23
24 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
25 **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all
26 defendants) (Cal Civ. § 54-54.8)

27 38. Plaintiff repleads and incorporates by reference, as if fully set forth
28 again herein, the allegations contained in all prior paragraphs of this

1 complaint.

2 39. Because the defendants violated the plaintiff's rights under the ADA,
3 they also violated the Disabled Persons Act and are liable for damages. (Civ.
4 Code § 54.1(d), 54.3(a).)

5 40. Because the violation of the Disabled Persons Act resulted in difficulty,
6 discomfort or embarrassment for the plaintiffs, the defendants are also each
7 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
8 (c).)

9
10 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
11 and against all defendants)

12 41. Plaintiff repleads and incorporates by reference, as if fully set forth
13 again herein, the allegations contained in all prior paragraphs of this
14 complaint.

15 42. The Defendants had a general duty and a duty arising under the
16 Americans with Disabilities Act and the Unruh Civil Rights Act and
17 California Disabled Persons Act to provide safe, convenient, and accessible
18 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding
19 paragraphs, has caused injury and damage as alleged above.

20
21 **PRAYER:**

22 Wherefore, Plaintiff prays that this court award damages and provide
23 relief as follows:

24 1. For injunctive relief, compelling defendants to comply with the
25 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
26 Plaintiffs are not invoking section 55 of the California Civil Code and is not
27 seeking injunctive relief under the Disabled Persons Act at all.

